

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CDS FAMILY TRUST, *et al*,

*

Plaintiff,

*

v.

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Civil Case No. 1:15-cv-02584-JMC

ERNEST R. MARTIN, *et al*,

*

Defendants.

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* * * * *

**MEMORANDUM OPINION ADDRESSING PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AS TO COUNTS 1, 2, 3, 4, AND 6 AGAINST WPO, INC**

At its core, this case involves an allegation that Defendants wrongfully mined coal from an area where they did not own the necessary mineral rights. The case is before me for all proceedings by the consent of the parties pursuant to 28 U.S.C. § 636(c). Now pending before this Court are five motions for summary judgment (ECF Nos. 125, 126, 127, 129, and the remainder of 130) by various plaintiffs and defendants. This memorandum only concerns ECF No. 129, Plaintiffs' Motion for Summary Judgment as to Counts 1, 2, 3, 4, and 6 against Defendant WPO, Inc. The Court has also reviewed WPO's opposition and the Coal Defendants' opposition. (ECF Nos. 145 and 159). No reply was filed, and no hearing is necessary.

Central to Plaintiffs' motion are requests for admission that Plaintiffs assert were served on WPO and remain unanswered. As such, Plaintiffs argue that the matters set forth in them are conclusively established, entitling them to judgment. In their Opposition, (ECF No. 159), WPO denies receiving any requests for admission from Plaintiffs. That is, WPO denies that the requests were ever served, as required by Federal Rule of Civil Procedure 36, and so deny that its failure to serve responses establishes the facts asserted in the requests.

Given that Plaintiffs' motion rises and falls with the requests for admission, and the representations to the Court given by WPO (and, by signing the Opposition, their counsel) that the requests were never received, the matters asserted in those requests are not deemed established. Without such support, Plaintiffs' motion does not sufficiently show a lack of genuine dispute as to any material facts.

The parties should note, however, that depending on the outcome of the upcoming hearing addressing all open motions, the Court may well permit Plaintiffs (or any other parties) to propound requests for admissions to streamline any remaining issues in advance of trial.

For the foregoing reasons, Plaintiffs' motion, (ECF No. 129), is **DENIED**. A separate order follows.

Dated: April 9, 2019

_____/s/
J. Mark Coulson
United States Magistrate Judge